

आयकर अपीलीय अधिकरण, अहमदाबाद न्यायपीठ 'A' अहमदाबाद।
IN THE INCOME TAX APPELLATE TRIBUNAL
"A" BENCH, AHMEDABAD

BEFORE SMT.ANNAPURNA GUPTA, ACCOUNTANT MEMBER
AND
SHRI SIDDHARTHA NAUTIYAL, JUDICIAL MEMBER

Stay Petition No.11/Ahd/2024

IN

ITA No.1264/Ahd/2024

Assessment Year : 2015-16

Siddhi Parag Patel Chowk Koi No Pado Khambhat Anand 388 620 Gujarat. India PAN : AOIPP 3661 G	Vs	The ITO, Ward-1(3)(1) Ahmedabad.
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(Applicant)		(Responent)
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Assessee by :	Shri Mahesh Varjani, AR
Revenue by:	Shri Ramesh Kumar, Sr.DR

सुनवाई की तारीख/Date of Hearing : 23/08/2024
घोषणा की तारीख /Date of Pronouncement: 23/08/2024

आदेश/ORDER

PER ANNAPURNA GUPTA, ACCOUNTANT MEMBER

Vide this Stay Application, the assessee seeks stay of recovery of tax and interest thereon amounting in all to Rs.44,51,850/- arising on account of assessment framed on the assessee for the impugned assessment year resulting in addition to her income which stood confirmed by the ld.CIT(A).

2. The reasons mentioned in the application of the assessee for seeking stay are primarily two folds; (i) the assessee has *prima facie* a good case for deletion of the entire addition made in her case, and (ii) that in any case the assessee has already deposited 20% of the

demand raised on it, thus, fulfilling the basic criterion laid down for granting of stay by the Tribunal in terms of provisions of section 254(2A) of the Act.

3. With respect to contention that the assessee had paid 20% of the tax demand raised on it, the ld.counsel for the assessee pointed out that in the assessment framed on the assessee, an addition of Rs.1,06,98,000/- was made on account of unexplained investment in land. That in consequence to the assessment so framed, tax demand of Rs.36,77,622/- was raised on the assessee levying tax at the rate of 30% on the addition made on account of unexplained investment, the tax rate being levied in terms of provisions of section 115BBE of the Act. Thereafter, the ld.counsel for the assessee pointed out that the AO passed a rectification order u/s 154 of the Act noting that the tax rate of 30% levied on the addition made on account of unexplained investment was incorrect and higher rate of tax ought to be levied. Accordingly, the tax computed on the income of the assessee was increased to Rs.55,83,586/-. The ld.counsel for the assessee pointed out that in the intervening period between the passing of the assessment order under section 143(3) and the rectification order under section 154 of the Act, the assessee had paid tax on account of demand raised on regular assessment amounted to Rs.10,80,427/-. Taking note of the same, therefore, and giving credit of the same to the assessee, the demand raised as a consequence of the rectification order passed under section 154 of the Act amounted to Rs.45,03,159/-. That subsequently further tax of Rs.40,530/- was paid on account of regular assessment. Copy of the orders were placed before us i.e. the assessment order passed under section 143(3) of the Act, rectification order passed under section 154 of the Act and demand notice u/s 156 of the Act raised in consequence to the rectification order passed under section 154 of the Act. Copies of

challans of tax paid was also filed. The ld.counsel for the assessee, therefore, contended that out of the total tax held to be payable by the assessee was of Rs.55,83,586/-, the assessee had paid (Rs.10,80,427/- + Rs. 40,530/-) Rs.11,20,957/- as regular assessment tax and considering the advance tax and self-assessment tax paid by the assessee, a total amount of Rs.11,32,370/- was paid by the assessee, which amounted to 20.28% of the total tax payable by the assessee. A working in this regard was filed before us in writing. Thus, the ld.counsel for the assessee demonstrated that it had paid 20% of the total tax demanded.

4. With respect to the aspect of the assessee having a *prima facie* favorable case in appeal, the ld.counsel for the assessee stated that on the issue of addition made to the income of the assessee on account of unexplained investment amounting to Rs.1.06 crores, the assessee had never been properly heard by either of the Revenue authorities below nor the facts properly appreciated. He pointed out from the assessment order that the pleadings of the assessee before the AO was that the impugned investment was neither made in the impugned year nor were payments for the purchase of land made in the impugned year, and therefore, no question arose for making any addition to the income of the assessee on account of unexplained investment in the impugned order; that despite the assessee so pointing out the AO, simply on the basis of the date when the Registrar noted in his Register the registration of the documents, held that the assessee had purchased the property in the impugned year, and therefore, rejected the assessee's explanation. He pointed out that the AO neither confronted the assessee with this fact to give an opportunity of rebuttal nor did he seek any clarification with regard to the payments by the assessee for the purchases of the impugned property which the assessee had clearly stated and which was clearly evident from the

sale deed also, to have been made in the preceding year. He contended, therefore, that the addition made in the hands of the assessee on account of unexplained investment was grossly unjustified and against the principle of natural justice without giving the assessee opportunity to make out its case before the AO. Thereafter, he took us through the order of the ld.CIT(A) and it was pointed out that the assessee had filed written submissions before the ld.CIT(A) reiterating the facts as stated to the AO along with documentary evidence, but the ld.CIT(A) simply confirmed the finding of the AO without verifying the facts repeatedly stated by the assessee that the sale deed was registered in the preceding year, and all the payments also were made in the preceding year for the purchase of the land.

He therefore contended that the issue involved in the present case was a factual issue, which was clearly ascertainable from the documents already on record before the Revenue authorities and which clearly demonstrated both the facts as stated by the assessee of the documents for purchase of the land being executed and registered in the year preceding the impugned year, and payments also thereof being made in the preceding year. That the addition clearly was not justified. The ld.counsel for the assessee thus demonstrated that *prima facie* it has a good case.

In view of the above contentions made by the ld.counsel for the assessee before us, it was pleaded that the outstanding demand of Rs.45 lakhs be stayed.

5. The ld.DR vehemently opposed the stay of the demand, but was unable to controvert the contentions made by the ld.counsel for the assessee before, as noted above.

6. Arguments of both the parties were heard and orders and documents referred to before us considered. We hold that it is a fit case to grant stay of recovery of outstanding demand.

Undoubtedly the assessee has paid 20% of tax demand. The Ld.Counsel for the assessee has also demonstrated the demand to have arisen on account of addition made without appreciation of facts before the Revenue authorities and without giving the assessee adequate opportunity of hearing. We find merit in the contention of the ld.counsel for the assessee that it has a *prima facie* good case. Considering the same we grant stay to the assessee from the recovery of demand for a period of three months or till the passing of order in appeal before us whichever is earlier. We direct the AO accordingly. Further, we direct the Registry to fix the appeal of the assessee in ITA No.1264/Ahd/24 for hearing on 17th September 2024.

7. In the result, the stay application filed by the assessee is allowed.

Order pronounced in the Court on 23rd August, 2024 at Ahmedabad.

Sd/-
(SIDDARTHA NAUTIYAL)
JUDICIAL MEMBER

Sd/-
(ANNAPURNA GUPTA)
ACCOUNTANT MEMBER

Ahmedabad, dated 23/08/2024
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